

**§ 108.710 Requirement to finance Low-Income Enterprises.**

(a) *Low-Income Enterprise Financings.* At the close of each of your fiscal years—

(1) At least 80 percent of your Portfolio Concerns must be Low-Income Enterprises in which you have an Equity Capital Investment; and

(2) For all Financings you have extended, you must have invested at least 80 percent (in total dollars) in Equity Capital Investments in Low-Income Enterprises.

(b) *Non-compliance with this section.* If you have not reached the percentages required in paragraph (a) of this section at the end of any fiscal year, then you must be in compliance by the end of the following fiscal year. However, you will not be eligible for additional Leverage until such time as you reach the required percentages (see § 108.1120).

**§ 108.720 Small Businesses that may be ineligible for financing.**

(a) *Relenders or reinvestors.* You are not permitted to finance any business that is a relender or reinvestor. Relenders or reinvestors are businesses whose primary business activity involves, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair.

(b) *Passive Businesses.* You are not permitted to finance a passive business.

(1) *Definition.* A business is passive if:

(i) It is not engaged in a regular and continuous business operation (for purposes of this paragraph (b), the mere receipt of payments such as dividends, rents, lease payments, or royalties is not considered a regular and continuous business operation); or

(ii) Its employees are not carrying on the majority of day to day operations, and the company does not provide effective control and supervision, on a day to day basis, over persons employed under contract; or

(iii) It passes through substantially all of the proceeds of the Financing to another entity.

(2) *Exception for pass-through of proceeds to subsidiary.* With the prior written approval of SBA, you may finance

a passive business if it is a Small Business and it passes substantially all the proceeds through to one or more subsidiary companies, each of which is an eligible Small Business that is not passive. For the purpose of this paragraph (b) (2), “subsidiary company” means a company in which at least 50 percent of the outstanding voting securities are owned by the Financed passive business.

(3) *Exception for certain Partnership NMVC companies.* With the prior written approval of SBA, if you are a Partnership NMVC Company, you may form one or more wholly owned corporations in accordance with this paragraph (b) (3). The sole purpose of such corporation(s) must be to provide Financing to one or more eligible, unincorporated Small Businesses. You may form such corporation(s) only if a direct Financing to such Small Businesses would cause any of your investors to incur unrelated business taxable income under section 511 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 511). Your investment of funds in such corporation(s) will not constitute a violation of § 108.730(a).

(c) *Real Estate Businesses.* (1) You are not permitted to finance:

(i) Any business classified under subsector 5311 (Lessors of Real Estate) of the NAICS Manual; or

(ii) Any business listed under subsector 5312 (Offices of Real Estate Agents and Brokers) unless at least 80 percent of the revenue is derived from non-Affiliate sources.

(2) You are not permitted to finance a business, regardless of NAICS classification, if the Financing is to be used to acquire or refinance real property, unless the Small Business:

(i) Is acquiring an existing property and will use at least 51 percent of the usable square footage for an eligible business purpose; or

(ii) Is building or renovating a building and will use at least 67 percent of the usable square footage for an eligible business purpose; or

(iii) Occupies the subject property and uses at least 67 percent of the usable square footage for an eligible business purpose.

(d) *Project Financing.* You are not permitted to finance a business if: